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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

No. 932 48

LOUIS H. PINK, Superintendent of Insurance of the State of New York,

Petitioner,

vs.

A. A. A. HIGHWAY EXPRESS, INC.; H. A. ADAMS, Trading as Adams Transfer Co.; H. L. BASS, as Bass Bus Line; SERVICE COACH LINE, INC.; EAST & WEST MOTOR LINES, ROY R. REAGIN, GEORGIA MOTOR EXPRESS, INC., S. S. SALE, SALE TRANSFER CO., SOUTHEASTERN STAGES, INC., EVERREADY CAB COMPANY, J. H. BOOKER, d/b/a Savannah Beach Line and/or Atlantic Stages; FLETCHER T. KAYLOR, d/b/a Kaylor Transfer Co.; J. F. MURRAY, d/b/a Georgia Alabama Coach Line; KALER PRODUCE COMPANY, COX BROS. UNDERTAKING CO., INC., ATLANTA MACON MOTOR EXPRESS, INC., SOUTHEASTERN MOTOR LINES, INC., and/or Cedartown Bus Line, J. RUSSELL, d/b/a Russell Transfer Co., CONTINENTAL CARRIERS, INC., BATEMAN COMPANY, INC., DOWNIE BROTHERS CIRCUS, KINNETT ODOM COMPANY, INC., SOUTHERN STAGES, INC., WEATHERS BROS. TRANSFER CO., INC., M. & A. MOTOR FREIGHT LINES, INC.

**SUPPLEMENTAL AND REPLY BRIEF FOR
PETITIONER.**

**ELLIOTT GOLDSTEIN,
MAX F. GOLDSTEIN,
ALFRED C. BENNETT,**

Counsel for Petitioner.

**M. F. GOLDSTEIN,
ARTHUR G. POWELL,
BURKETT D. MURPHY,
1130 C. & S. Bank Bldg.,
Atlanta, Georgia.**

**ALFRED C. BENNETT,
160 Broadway,
New York City.**

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SUPPLEMENTAL AND REPLY BRIEF FOR PETITIONER.

I.

THE QUESTION INVOLVED IS ONE OF GREAT INTEREST IN DETERMINING THE QUALIFICATION OF INSURERS ACCEPTABLE TO THE MOTOR CARRIER DIVISION OF THE INTERSTATE COMMERCE COMMISSION (Original Brief, pp. 14, 15).

The record and petition having been brought to the attention of the Interstate Commerce Commission, the division having charge of insurance (Bureau of Motor Car-

riers) has informed petitioner of its interest. An excerpt follows:

"The principal question involved, as I understand it, is whether liability to assessment imposed by the laws of the State of domicile of a mutual casualty company can be enforced in the courts of another state in which different laws as to such assessments prevail.

"The question is one of great interest to this Commission both so far as the particular case is concerned and also as affecting generally its function of determining the qualifications of insurers. The insurer involved is the Auto Mutual Indemnity Company of New York. At the time it was placed in liquidation there were three hundred sixty-eight certificates of insurance issued by this company on file with this Commission as security for the protection of the public. The extent of the claims under these certificates is not known, since the Commission has no jurisdiction to enforce such claims, but it is naturally interested in seeing that the public is actually protected."

The three hundred sixty-eight motor carriers referred to above were engaged in interstate commerce. Their activities covered many states and certainly affect many people. The rights of all of them await an authoritative decision of the conflicting questions involved.

II.

THE BRIEF OF DEFENDANTS ADMITS DISCRIMINATION AGAINST PETITIONER.

The brief of the defendants cites statutes applicable to companies organized under the statutes of Georgia (page 7); applicable to fire and life insurance companies (page 8), and to assessment life insurance companies (page 9). They do not contend that these statutes are applicable to **mutual casualty companies**. Nor does the brief deny that under

the general law of Georgia, governing mutual companies (Carlton v. Southern Mutual Life Insurance Company, 72 Ga. 372; our brief, p. 20), "each assured becomes interested in profits and **liable for losses.**" By their failure to deny it, defendants admit that when the action is brought by a resident of Georgia against a policyholder in a mutual company, liability to assessment may not be resisted **because the policy contains no reference to the Constitution and by-laws.**

Alma Gin & Milling Co. v. Peeples, 145 Ga. 722 (Our Brief, p. 20).

A construction of the Georgia statutes whereby its own residents may recover assessments from members of an insolvent mutual company, whose policies did not include in their face a reference to the by-laws imposing liability for assessment, but denying the privilege when asserted by residents of other states, discriminates against citizens of other states, in violation of the Constitution of the United States, Article IV.

The decision of the Georgia Supreme Court is in conflict with the principles announced by this Court in **Blake v. McClung**, 176 U. S. 59, at 67, 44 L. ed. 371, at 374, holding:

"The judgment of the state court * * * so far as it gave priority to citizens of Tennessee over citizens of other states, was inconsistent with the second section of the Fourth Article of the Constitution of the United States."

And with the decision of this Court in **Sully v. American National Bank**, 178 U. S. 289, at 300, 44 L. ed. 1072, holding:

"If the statute does not permit such postponement against a resident mortgagee, then the postponement in the case of a nonresident mortgagee would be invalid."

III.

WHETHER THE STATE HAS DENIED TO A FOREIGN CORPORATION THE PRIVILEGE OF DOING BUSINESS ON A LEVEL WITH DOMESTIC CORPORATIONS IS A QUESTION FOR THE DETERMINATION OF THE FEDERAL COURTS.

Defendants insist that the construction of the policy by the state court is conclusive of the right asserted. This Court has often ruled to the contrary.

In **Hanover Fire Insurance Co. v. Carr**, 272 U. S. 494, at 510, 71 L. ed. 372, at 380, a similar argument was considered and rejected, the Court holding:

"But this court, although bound by the construction that the supreme court may put upon the statute, **is not bound by the characterization of it so far as that characterization may bear upon the question of its constitutional effect.**" (Emphasis ours.)

Respectfully submitted,

ELLIOTT GOLDSTEIN,

MAX F. GOLDSTEIN,

ALFRED C. BENNETT,

Counsel for Petitioner.

M. F. GOLDSTEIN,

ARTHUR G. POWELL,

BURKETT D. MURPHY,

1130 C. & S. Bank Bldg.,

Atlanta, Georgia.

ALFRED C. BENNETT,

160 Broadway,

New York City.